

**FILED**

**SEP 28 2006**

**CATHY A. CATTERSON, CLERK  
U.S. COURT OF APPEALS**

**FOR PUBLICATION**

**UNITED STATES COURT OF APPEALS**

**FOR THE NINTH CIRCUIT**

JAMES ODOM,

Plaintiff - Appellant,

V.

MICROSOFT CORPORATION, a  
Washington corporation; BEST BUY CO.,  
INC., a Minnesota corporation,

Defendants - Appellees.

No. 04-35468

D.C. No. CV-03-02976-MJP

ORDER

Before: SCHROEDER, Chief Judge.

Upon the vote of a majority of nonrecused regular active judges of this court,<sup>1</sup> it is ordered that this case be reheard by the en banc court pursuant to Circuit Rule 35-3.

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<sup>1</sup>Judges Pregerson, McKeown, Wardlaw, Gould, Clifton, Smith, and Ikuta are recused.